

# AMENDED AND RESTATED MASTER POWER PURCHASE AND SALE AGREEMENT

## COVER SHEET

This *Amended and Restated Master Power Purchase and Sale Agreement* (“*Master Agreement*”) is made and entered into as of the hour ending 24:00 on December 31, 2002 (the “Effective Date and Time”). The *Master Agreement*, together with the exhibits, schedules and any written supplements hereto, the Party A Tariff, if any, the Party B Tariff, if any, any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions (including any confirmations accepted in accordance with Section 2.3 hereto) shall be referred to as the “Agreement,” and amends and restates in its entirety the Master Power Purchase and Sale Agreement, dated as of June 25, 2001, by and between Party A and Party B. The Parties to this *Master Agreement* are the following:

Name: **State of California Department of Water Resources**, separate and apart from its powers and responsibilities with respect to the State Water Resources Development System (“Buyer” or “Party A”)

All Notices: California Department of Water Resources/CERS

Street: 3310 El Camino Avenue, Suite 120

City: Sacramento, California Zip: 95814

Attn: Executive Manager Power Systems

Phone: 916-574-0339

Facsimile: 916-574-2152

Duns:

Federal Tax ID Number:

### **Invoices:**

Attn: Doreen Singh

Phone: 916-574-0309

Facsimile: 916-574-1239

### **Scheduling:**

Attn: Chief Water and Power Dispatcher

Phone: 916-574-0161

Facsimile: 916-574-2569

Name: **Sunrise Power Company, LLC** (“Seller” or “Party B”)

All Notices:

Street: P.O. Box 81617

City: Bakersfield, CA Zip: 93380-1617

Attn: Executive Director

Phone: 661-302-2630

Facsimile: 661-392-2990

Duns:

Federal Tax ID Number:

### **Invoices:**

Attn: Accounting Department

Phone: 661-392-2630

Facsimile: 661-392-2990

### **Scheduling:**

Attn: Chris Jylkka

Phone: 617-912-5937

Facsimile: 617-912-5707

**Payments:**

Attn: Cash Receipts Section  
 Phone: 916-653-6892  
 Facsimile: 916-654-9882

**Wire Transfer:**

BNK:  
 ABA: Routing #  
 ACCT: #

**Credit and Collections:**

Attn: Deputy Controller  
 Phone: 916-653-6148  
 Facsimile: 916-653-8230

With additional Notices of an Event of Default  
 or Potential Event of Default to:

Attn: Deputy Controller  
 Phone: 916-653-6148  
 Facsimile: 916-653-8230

**Payments:**

Attn: Accounting Department  
 Phone: 661-392-2630  
 Facsimile: 661-392-2990

**Wire Transfer:**

BNK:  
 ABA:  
 ACCT:

(Sunrise Power Company, LLC)

Attn:

**Credit and Collections:**

Attn: Accounting Department  
 Phone: 661-392-2630  
 Facsimile: 661-392-2990

With additional Notices of an Event of  
 Default or Potential Event of Default to:

Attn: \_\_\_\_\_  
 Phone: \_\_\_\_\_  
 Facsimile: \_\_\_\_\_

The Parties hereby agree that the General Terms and Conditions are incorporated herein,  
 and to the following provisions as provided for in the General Terms and Conditions:

Party A Tariff Tariff \_\_\_\_\_ Dated \_\_\_\_\_ Docket Number \_\_\_\_\_

Party B Tariff Tariff \_\_\_\_\_ Dated \_\_\_\_\_ Docket Number \_\_\_\_\_

**Article Two**

Transaction Terms and  
 Conditions

☐ Optional provision in Section 2.4. If not checked,  
 inapplicable.

Not Applicable

**Article Four**

Remedies for Failure  
 to Deliver or Receive

☐ Accelerated Payment of Damages. If not checked,  
 inapplicable.

**Article Five**

Events of Default; Remedies

☐ Cross Default for Party A: Not Applicable

☐ Party A: \_\_\_\_\_ Cross Default Amount \$ \_\_\_\_\_

☐ Other Entity: \_\_\_\_\_ Cross Default Amount \$ \_\_\_\_\_

☐ Cross Default for Party B: Not Applicable

☐ Party B: \_\_\_\_\_ Cross Default Amount \$ \_\_\_\_\_

☐ Other Entity: \_\_\_\_\_ Cross Default Amount \$ \_\_\_\_\_

#### 5.6 Closeout Setoff

☐ Option A (Applicable if no other selection is made.)

☐ Option B - Affiliates shall have the meaning set forth in the Agreement unless otherwise specified as follows: \_\_\_\_\_  
\_\_\_\_\_

☒ Option C (No Setoff)

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### **Article 8**

#### Credit and Collateral Requirements

#### 8.1 Party A Credit Protection:

(a) Financial Information: Not Applicable

☐ Option A

☐ Option B Specify: \_\_\_\_\_

☐ Option C Specify: \_\_\_\_\_

(b) Credit Assurances:

☒ Not Applicable

☐ Applicable

(c) Collateral Threshold:

☒ Not Applicable

☐ Applicable

If applicable, complete the following:

Party B Collateral Threshold: \$ \_\_\_\_\_; provided, however, that Party B's Collateral Threshold shall be zero if an Event of Default or Potential Event of Default with respect to Party B has occurred and is continuing.

Party B Independent Amount: \$ \_\_\_\_\_

Party B Rounding Amount: \$ \_\_\_\_\_

(d) Downgrade Event:

☒ Not Applicable

☐ Applicable

If applicable, complete the following:

☐ It shall be a Downgrade Event for Party B if Party B's Credit Rating falls below \_\_\_\_\_ from S&P or \_\_\_\_\_ from Moody's or if Party B is not rated by either S&P or Moody's

☐ Other:

Specify: \_\_\_\_\_

(e) Guarantor for Party B: Not Applicable

Guarantee Amount: Not Applicable

## 8.2 Party B Credit Protection:

(a) Financial Information:

☐ Option A  
☐ Option B Specify: \_\_\_\_\_  
☒ Option C Specify: annual audit, annual budget and all financial information sent to any seller under a power purchase agreement; Buyer shall use reasonable commercial efforts to periodically prepare and make available to Seller, but not more frequently than quarterly, financial information reasonably intended to apprise Seller of the financial condition of the Fund.

(b) Credit Assurances:

☒ Not Applicable  
☐ Applicable

(c) Collateral Threshold:

☒ Not Applicable  
☐ Applicable

If applicable, complete the following:

Party A Collateral Threshold: \$ \_\_\_\_\_; provided, however, that Party A's Collateral Threshold shall be zero if an Event of Default or Potential Event of Default with respect to Party A has occurred and is continuing.

Party A Independent Amount: \$ \_\_\_\_\_

Party A Rounding Amount: \$ \_\_\_\_\_

(d) Downgrade Event:

☐ Not Applicable  
☒ Applicable

If applicable, complete the following:

☐ It shall be a Downgrade Event for Party A if Party A's Credit Rating falls below \_\_\_\_\_ from S&P or \_\_\_\_\_ from Moody's or if Party A is not rated by either S&P or Moody's

☒ Other:  
Specify: See Section 8.2(d) of this Master Agreement.

(e) Guarantor for Party A: Not Applicable

Guarantee Amount: \_\_\_\_\_

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**Article 10**

Confidentiality

☐ Confidentiality Applicable    If not checked, inapplicable.

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**Schedule M**

☒ Party A is a Governmental Entity or Public Power System

☐ Party B is a Governmental Entity or Public Power System

☐ Add Section 3.6. If not checked, inapplicable

☐ Add Section 8.6. If not checked, inapplicable

**Other Changes**

Specify, if any: Yes. See below

## Other Changes

### Article One: General Definitions

1. The following shall be added at the beginning of Article One:

The following capitalized terms shall have the meaning ascribed to them in this Article One. Other capitalized terms used herein but not otherwise defined shall have the meaning ascribed to them in the Amended and Restated Confirmation Agreement (as defined below).

2. The following sections are amended by deleting the text therefrom and by substituting “Intentionally Deleted.” in its stead:

Section 1.6	“Call Option”
Section 1.13	“Cross Default Amount”
Section 1.24	“Gains”
Section 1.28	“Losses”
Section 1.33	“Offsetting Transactions”
Section 1.34	“Option”
Section 1.35	“Option Buyer”
Section 1.36	“Option Seller”
Section 1.37	“Party A Collateral Threshold”
Section 1.38	“Party B Collateral Threshold”
Section 1.39	“Party A Independent Amount”
Section 1.40	“Party B Independent Amount”
Section 1.41	“Party A Rounding Amount”
Section 1.42	“Party B Rounding Amount”
Section 1.43	“Party A Tariff”
Section 1.44	“Party B Tariff”
Section 1.46	“Potential Event of Default”
Section 1.48	“Put Option”
Section 1.53	“Sales Price”
Section 1.56	“Settlement Amount”
Section 1.57	“Strike Price”

3. Section 1.10 is amended (a) to delete the parenthetical phrase “(unless otherwise provided for)” , and (b) to delete the word “Transaction” and substituting in its stead “Amended and Restated Confirmation Agreement”.

4. Section 1.10 and Section 1.11 are amended to delete the respective definitions in their entirety and to replace the following in their stead:

“Contract Price” means the price, expressed in \$/MWh, that would be paid by Buyer to Seller for the purchase of the Product in any month, equal to the sum of (i) the VO&M Payment, (ii) the Fuel Payment for such month divided by the Net

Electrical Output delivered during such month, and (iii) the Capacity Payment rate applicable to such month divided by the total number of hours in such month; all terms as specified in the Amended and Restated Confirmation Agreement.”

“Costs” means, with respect to the Non-Defaulting Party, any and all costs and expenses directly or indirectly incurred by the Non-Defaulting Party in connection with the termination of this Master Agreement and the Amended and Restated Confirmation Agreement upon an Event of Default by the Defaulting Party and/or in connection with entering into new contract(s) to replace this Master Agreement and the Amended and Restated Confirmation Agreement upon such termination, including, but not limited to, brokerage fees, commissions, attorneys’ fees and other third party transaction costs and expenses. The Non-Defaulting Party shall use commercially reasonable efforts to mitigate or eliminate these Costs.”

5. Section 1.15 is amended to delete the words “as specified in the Transaction” and substituting in its stead “as specified in the Amended and Restated Confirmation Agreement”.

6. Section 1.16 is amended to delete the words “as specified in the Transaction” and substituting in its stead “as specified in the Amended and Restated Confirmation Agreement”.

7. Section 1.18 is deleted in its entirety and the following substituted in its stead:

“Early Termination Date” means the date of receipt of a notice of termination pursuant to Section 5.2.”

8. Section 1.20 is amended to add after the word “generally” therein the phrase: “(regardless of whether such enforcement is considered in a proceeding at law or in equity)”.

9. Section 1.23 is amended by deleting the text therefrom and substituting the following in its stead:

“Force Majeure” means any cause beyond the control of the Party affected, including but not restricted to, flood, drought, earthquake, storm, fire, lightning, epidemic, war, riot, civil disturbance or disobedience, labor dispute, labor or material shortage, sabotage, restraint by court order or public authority, and action or nonaction by, or failure to obtain the necessary authorizations or approvals from, any governmental agency or authority which by exercise of due diligence such Party could not reasonably have been expected to avoid and to the extent which by exercise of due diligence it has been unable to overcome.”

10. Section 1.47 and Section 1.51 are amended by deleting the respective definitions therefrom and substituting the following in their stead:

“Product” means the Contract Capacity (as defined in the Amended and Restated Confirmation Agreement) and the associated energy therefrom.”

“Replacement Price” means the price, expressed in \$/MWh, at which Buyer, acting in a commercially reasonable manner, purchases a replacement for the Product requested by Buyer in a Dispatch Notice pursuant to the Amended and Restated Confirmation Agreement but not delivered by Seller, plus (i) costs reasonably incurred by Buyer in purchasing such replacement energy and (ii) additional transmission and congestion charges, if any, that would be reasonably incurred by Buyer to bring such replacement energy to the CAISO zone in which the Delivery Point is located; provided, however, Buyer shall use reasonable efforts to purchase replacement energy at the lowest available price; and further provided, in no event shall such price include any penalties or charges imposed by Buyer, nor shall Buyer be required to utilize or change its utilization of its owned or controlled assets or market positions to minimize Seller's liability. For the purposes of this definition, Buyer shall be considered to have purchased replacement energy to the extent Buyer shall have entered into one or more arrangements in a commercially reasonable manner whereby Buyer repurchases its obligation to sell and deliver the Product to another party at the Delivery Point.”

11. Section 1.60 is amended by deleting the text therefrom and by substituting the following in its stead:

“Transaction” means the transactions described in the Amended and Restated Confirmation Agreement for the purchase and sale of Contract Capacity (as defined therein), taken as a single, integrated transaction.

12. The following definitions shall be added in the appropriate alphabetical and numerical order in Article One:

“Amended and Restated Confirmation Agreement” means that certain Amended and Restated Confirmation Agreement, dated as of even date herewith, by and between Buyer and Seller.

“Bonds” mean any revenue bonds issued by Buyer and/or its permitted assignee for the purposes set forth in Section 80010(a) of the California Water Code (or permitted assignee’s authorizing legislations), such purposes including, but not limited to, payment for power purchases by Buyer from Seller under this Master Agreement and the Amended and Restated Confirmation Agreement and from third parties under other power purchase agreements.

“Capacity Payment” has the meaning ascribed to such term in the Amended and Restated Confirmation Agreement.

“Collateral” has the meaning ascribed to such term in Section 10.19(a).

“CPUC” means the California Public Utilities Commission, or its successor.

“Department” has the meaning ascribed to such term in the Cover Sheet.

“Financial Closing” means the date on which binding commitments to provide financing to Seller under the Financing Documents are issued and effective, conditions to initial borrowings are satisfied, amounts become available for borrowing by Seller from the Lenders under the Financing Documents, and liens, security interests and/or mortgages are granted by Seller on Seller’s assets in favor of the Lenders providing financing to Seller under Financing Documents.

“Financing Documents” means any loan and credit agreements, notes, bonds, indentures, security agreements, lease financing agreements, mortgages, interest rate exchanges, swap agreements and other documents and instruments relating to the development, bridge, construction and/or permanent financing for the Facility, including, without limitation, any credit enhancement, credit support, working capital financing or refinancing documents, and any and all amendments, modifications or supplements to the foregoing that may be entered from time to time at the discretion of Seller.

“Fund” means the Department of Water Resources Electric Power Fund as set forth in California Water Code Section 80000 et seq. as established by February 1, 2001, Assembly Bill 1, First Extraordinary Session.

“Lenders” means any lenders and financial institutions (and their successors and assigns) providing financing to Seller under Financing Documents.

“Market Quotation Average Price” means the average of the good faith quotations solicited from not less than three (3) Reference Market-makers; provided, however, that the Party soliciting such quotations shall use commercially reasonable efforts to obtain good faith quotations from at least five (5) Reference Market-makers and, if at least five (5) such quotations are obtained, the Market Quotation Average Price shall be determined disregarding the highest and lowest quotations.

“Market Value” shall have the meaning set forth in Section 5.3.

“Party A” has the meaning ascribed to such term in the Cover Sheet.

“Party B” has the meaning ascribed to such term in the Cover Sheet.

“Per Unit Market Price” means the applicable price per MW-month of Contract Capacity and per MWh of Net Electrical Output determined in accordance with Section 5.3.

“Person” means any individual, corporation, limited liability company, partnership, limited partnership, joint venture, trust, unincorporated organization, association, governmental authority, or other entity.

“Qualified Electric Corporation” means an electrical corporation as defined by the Act, whose long-term unsecured senior debt on the effective date of any Replacement Agreement is rated BBB or better by S&P and Baa2 or better by Moody’s and is not on negative outlook or Credit Watch from either rating agency; provided that with the exception of San Diego Gas and Electric Company, Southern California Edison Company and Pacific Gas and Electric Company, no electrical corporation shall be a Qualified Electrical Corporation without the prior written agreement of Seller.

“Reference Market-maker” means any recognized marketer, trader or tolling party contracting for tolling services whose long-term unsecured senior debt is rated BBB or better by Standard & Poor’s and Baa2 or better by Moody’s Investor Services.

“Replacement Agreement” means any agreement identical to this Agreement and the Amended and Restated Confirmation Agreement between Seller and a Qualified Electrical Corporation, excluding provisions relating to Buyer’s status as a governmental agency or to the original start dates of this Agreement and the Amended and Restated Agreement, and together with such changes as Seller and such Qualified Electrical Corporation may mutually agree.

“Replacement Contract” means a contract having a term, price, quantity, delivery rate, delivery point and Product substantially similar to the remaining Term, price, quantity, delivery rate, Delivery Point and Product to be provided under this Master Agreement and Amended and Restated Confirmation Agreement.

“Seller” has the meaning ascribed to such term in the Cover Sheet.

“Trust Estate” means all revenues under any obligation entered into, and rights to receive the same, and moneys on deposit in the Fund and income or revenue derived from the investment thereof.’

## **Article Two: Transaction Terms and Conditions**

1. Section 2.1 is amended by deleting the text therefrom and substituting the following in its stead:

“The Transaction. The Transaction shall be entered into upon the execution by the Parties of this Agreement and the Amended and Restated Confirmation Agreement. Each Party agrees not to contest, or assert any defense to, the validity or enforceability of the Transaction, this Master Agreement or the Amended and Restated Confirmation Agreement based upon any lack of authority of the Party

or any lack of authority of any employee of the Party to enter into the Transaction, this Master Agreement or the Amended and Restated Confirmation Agreement.”

2. Section 2.2 is amended by deleting the text therefrom and substituting the following in its stead:

“Governing Terms. The Amended and Restated Confirmation Agreement and this Master Agreement shall form a single, integrated agreement between the parties with respect to the Transaction. In the event of any conflict between the Amended and Restated Confirmation Agreement and this Master Agreement, the terms of the Amended and Restated Confirmation Agreement shall govern.

3. Section 2.3 is amended by deleting the text therefrom and substituting the following in its stead:

“Confirmation. Buyer and Seller shall confirm the Transaction by executing and delivering to the other the Amended and Restated Confirmation Agreement.

4. Section 2.4 and Section 2.5 are amended by deleting the text therefrom and substituting the following in its stead:

“Intentionally Deleted.”

### **Article Three: Obligations and Deliveries**

1. Section 3.1 is amended to delete the clause “With respect to each Transaction,” and substituting therefor the clause “With respect to the Transaction,” and to delete the clause “; provided, however, with respect to Options, the obligations set forth in the preceding sentence shall only arise if the Option Buyer exercises its Option in accordance with its terms.”

2. Section 3.2 is hereby amended to delete from the first sentence the phrase “in the Transaction, or in the absence thereof,” and substituting in its stead “in the Amended and Restated Confirmation Agreement,”.

3. Section 3.3 is hereby deleted in its entirety and the following substituted shall be substituted in its stead:

“Force Majeure. (a) No Party shall be considered to be in breach of this Master Agreement and/or the Amended and Restated Confirmation Agreement to the extent that a failure to perform its obligations under this Master Agreement and/or Amended and Restated Confirmation Agreement shall be due to Force Majeure. No Party shall, however, be relieved of liability for failure of performance to the extent that such failure is due to causes arising out of its own negligence or due to removable or remediable causes which it fails to remove or remedy within a reasonable time period. Nothing contained herein shall be construed to require a

Party to settle any strike or labor dispute in which it may be involved. Any Party rendered unable to fulfill any of its obligations by reason of Force Majeure shall give prompt notice of such fact and shall exercise due diligence to remove such inability within a reasonable time period. If oral notice is provided, it shall be promptly followed by written notice. Notwithstanding the foregoing, Force Majeure shall not be based on (i) the loss of Buyer's markets; (ii) Buyer's inability economically to use or resell the Contract Capacity and Net Electrical Output (as defined in the Amended and Restated Confirmation Agreement) purchased hereunder; (iii) the loss or failure of Seller's supply, including, but not limited to, loss of Seller's generating assets or contracts for the purchase of power or energy, unless such loss or failure results from Force Majeure or from the action or inaction of Buyer; or (iv) Seller's ability to sell the Contract Capacity at a price greater than the Capacity Payment.

(b) Buyer shall not be relieved by operation of this Section 3.3 of any liability to pay for power delivered to Buyer by Seller or to make payments then due or which Buyer is obligated to make with respect to performance which occurred prior to the Force Majeure.

(c) If an event of Force Majeure prevents either Party from performing its material obligations under this Agreement for more than twelve (12) consecutive months, either Party may terminate this Agreement without further liability to the other Party."

#### **Article Four: Remedies for Failure to Deliver/Receive**

1. Section 4.1 shall be deleted in its entirety and the following shall be substituted in its stead:

"Seller Failure. If Seller fails to deliver all or part of the Product requested by Buyer in a Dispatch Notice pursuant to the Amended and Restated Confirmation Agreement, and such failure is not excused by the terms of the Amended and Restated Confirmation Agreement, by Force Majeure, by Buyer's failure to perform, or by any Scheduled Outage or Unscheduled Outage of the Facility, as defined in the Amended and Restated Confirmation Agreement (a "Seller Failure"), Buyer may elect to receive payment from Seller of an amount equal to the product of the amount of the Product Seller fails to deliver multiplied by the positive difference, if any, obtained by subtracting the Contract Price from the Replacement Price; in such event, Seller shall make payment to Buyer by the later of the twentieth (20th) day of each month or the tenth (10th) day after receipt of the applicable invoice, whichever is later, which invoice shall include a written statement explaining in reasonable detail the calculation of such amount; provided, however, in the event that Seller Failure is willful and occurs during a CAISO Stage 1-2-3 alert, and Seller did not believe that such Seller Failure was excused (with a valid basis for such belief), then Seller shall pay Buyer, as liquidated damages and not as a penalty, an amount equal to \$1,500,000 per day

for each day during which such intentional Seller Failure occurs. Such liquidated damages shall be due and owing during the next billing cycle. The parties hereto agree that damages at the time of Seller Failure would be very difficult to measure accurately and that the foregoing liquidated damages amount is a reasonable estimate of the amount necessary to compensate the Department for such Seller Failure. If Seller provides any Energy from the Facility to any third party other than in compliance with Section 5.06 of the Amended and Restated Confirmation Agreement, then Seller shall pay Buyer, as liquidated damages and not as a penalty, an amount equal to \$1,500,000 per day for each day on which Seller provided Energy from the Facility to such third party.

2. Section 4.2 shall be deleted in its entirety and the following shall be substituted in its stead:

“Buyer Failure. If Buyer fails to schedule and/or receive all or part of Product pursuant to the Amended and Restated Confirmation Agreement, and such failure is not excused by the terms of the Product, by Force Majeure or by Seller’s failure to perform, Buyer shall remain obligated to pay the Capacity Payment to Seller for such month on the date payment would otherwise be due.”

#### **Article Five: Events of Default; Remedies**

- 1 Section 5.1 is amended to delete subsections (g) and (h) in their entirety and to amend 5.1(c) to read as follows:

“(c) the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default) if such failure is not remedied within three (3) Business Days after written notice;”

2. Section 5.2 is deleted in its entirety and the following substituted in its stead:

“Early Termination and Termination Payment upon an Event of Default. (a) If an Event of Default occurs and shall be continuing, the non-defaulting Party (the “Non-Defaulting Party”) shall have the right (a) to suspend or terminate this Master Agreement and the Amended and Restated Confirmation Agreement upon written notice (by facsimile or other reasonable means) to the defaulting Party (the “Defaulting Party”), such notice of suspension or termination to be effective immediately upon receipt, and (b) to withhold any payments due to the Defaulting Party under this Master Agreement and/or the Amended and Restated Confirmation Agreement. Subject to Section 8.2(b), in the event the Non-Defaulting Party elects to terminate this Master Agreement and the Amended and Restated Confirmation Agreement for an Event of Default in accordance with the terms hereof and thereof, the Non-Defaulting Party shall be entitled to receive payment equal to the sum of the Market Value calculated in accordance with Section 5.3 (the “Termination Payment”), the Costs and any other amounts then

due and payable from the Defaulting Party under this Master Agreement and the Amended and Restated Confirmation Agreement.

(b) At any time prior to or after the receipt of such notice of suspension or termination by the Defaulting Party, the Non-Defaulting Party may exercise any remedies available to it at law or in equity, including, but not limited to, the right to seek injunctive relief to prevent irreparable injury to the Non-Defaulting Party.

(c) Notwithstanding any other provisions of this Master Agreement or Amended and Restated Confirmation Agreement, if the Non-Defaulting Party has the right to liquidate or terminate all obligations arising under this Master Agreement and Amended and Restated Confirmation Agreement under the provisions of this Article 5 because the Defaulting Party either (a) is the subject of a bankruptcy, insolvency, or similar proceeding, or (b) applies for, seeks, consents to, or acquiesces in the appointment of a receiver, custodian, trustee, liquidator, or similar official for all or a substantial portion of its assets, this Master Agreement, the Amended and Restated Confirmation Agreement and the Transaction shall automatically terminate, without notice, as if the Early Termination Date was the day immediately preceding the applicable bankruptcy event.”

3. Section 5.3 is deleted in its entirety and the following shall be substituted in its stead:

“5.3. Termination Payment Calculations. The Non-Defaulting Party shall calculate, and shall be entitled to receive from the Defaulting Party, the Termination Payment as follows:

(a) Market Value shall be:

(i) in the case Buyer is the Non-Defaulting Party, the present value of the positive difference, if any, of (A) payments under a Replacement Contract based on the Per Unit Market Price, and (B) all payments owed by Seller to Buyer under this Master Agreement and the Amended and Restated Confirmation Agreement; or

(ii) in the case Seller is the Non-Defaulting Party, the present value of the positive difference, if any, of (A) all payments owed by Buyer to Seller under this Master Agreement and the Amended and Restated Confirmation Agreement, and (B) payments under a Replacement Contract based on the Per Unit Market Price, in each case using the Present Value Rate as of the time of termination (to take account of the period between the time notice of termination was effective and when such amount would have otherwise been due pursuant to the relevant transaction).

"Present Value Rate" shall mean the sum of 0.50% plus the yield reported on page "USD" of the Bloomberg Financial Markets Services Screen (or, if not available, any other nationally recognized trading screen reporting on-line intraday trading in United States government securities) at 11:00 a.m. (New York, New York time) for the United States government securities having a maturity that matches the average remaining term of this Master Agreement.

The Parties expressly agree that the Non-Defaulting Party shall not be required to enter into a Replacement Contract in order to determine or to be entitled to receive the Termination Payment.

(b) To ascertain the Per Unit Market Price of a Replacement Contract with a term of less than one (1) year, the Non-Defaulting Party may consider, in its reasonable discretion, among other valuations, reliable quotations from Reference Market-makers, the settlement prices on established, actively traded power exchanges, other bona fide third party offers and/or other commercially reasonable market information.

(c) To ascertain the Per Unit Market Price of a Replacement Contract with a term of one (1) year or more, the Non-Defaulting Party shall use the Market Quotation Average Price; provided, however, that if there is an actively traded market for such Replacement Contract or if the Non-Defaulting Party is unable to obtain reliable quotations from at least three (3) Reference Market-makers, the Non-Defaulting Party shall use the methodology set forth in paragraph (b).

(d) In no event, however, shall a Party's Market Value or Costs include any penalties or charges imposed by the Non-Defaulting Party.

(e) The Termination Payment shall be payable by the Defaulting Party to the Non-Defaulting Party no later than one hundred eighty (180) days after Defaulting Party's receipt of the Non-Defaulting Party's written notice of termination of this Master Agreement and Amended and Restated Confirmation Agreement.

If the Defaulting Party disagrees with the calculation of the Termination Payment and the Parties cannot otherwise resolve their differences, the calculation issue shall be resolved in accordance with the terms of this Master Agreement. Pending resolution of the dispute, the Defaulting Party (a) shall pay the undisputed amount, if any, of the Termination Payment to the Non-Defaulting Party, and (b) shall pay the disputed amount of the Termination Payment into an escrow account, in each case no later than one hundred eighty (180) days after receipt of the Non-Defaulting Party's written notice of termination of this Master Agreement and Amended and Restated Confirmation Agreement."

4. Section 5.4 is deleted in its entirety and the following is substituted in its stead:

5.4 Events of Termination Default. Upon the occurrence of either or both of the events listed as 5.4(i) and 5.4(ii) below (the “Events of Termination Default”), the Department shall have the right to terminate this Master Agreement and the Amended and Restated Confirmation Agreement upon ten (10) Business Days written notice. Seller shall not be required to pay any Termination Payment if said agreements are terminated due exclusively to an Event of Termination Default.

(i) Seller provides any Energy from the Facility to any third party other than in compliance with Section 5.06 of the Amended and Restated Confirmation Agreement (relating to required offers to CAISO), except that the first such incident (and only the first) shall be deemed excused and shall not constitute an Event of Termination Default; or

(ii) The Annual Availability of the Facility (as determined in accordance with Section 8.05 of the Amended and Restated Confirmation Agreement) is less than 70% in any three consecutive calendar years.

5. Section 5.5 and Section 5.6 are deleted in their entirety and following substituted in their stead:

“Intentionally Deleted.”

#### **Article Six: Payment and Netting**

1. The Article Six heading is amended to delete the words “and Netting”.

2. Section 6.1 is deleted in its entirety and the following substituted in its stead:

“Billing Period. Unless otherwise specifically agreed upon by the Parties in the Amended and Restated Confirmation Agreement, the calendar month shall be the standard period for all payments under this Agreement (other than Accelerated Payments and, if “Accelerated Payment of Damages” is specified by the Parties in the Cover Sheet, payments pursuant to Section 4.1 or 4.2). As soon as practicable after the end of each month, Seller will render to Buyer an invoice for the payment obligations incurred hereunder during the preceding month.”

3. Section 6.2 is deleted in its entirety and the following substituted in its stead:

“Timeliness of Payments. Buyer shall ensure that payments for amounts billed hereunder shall be paid so that such payments are received by Seller by the later of the twentieth (20<sup>th</sup>) day of each month or the tenth (10<sup>th</sup>) day after receipt of the applicable invoice, whichever is later. Payment shall be made at the location designated by Seller to which payment is due. Payment shall be considered received when Seller receives such payment from Buyer. If the due date falls on a non-Business Day, then the payment shall be due on the Business Day

immediately preceding such due date. Amounts not paid on or before the due date shall be payable with interest accrued at the rate of one percent (1%) above the Pooled Money Investment Account rate accrued in accordance with California Government Code Section 927.6(6) not to exceed fifteen percent (15%).”

4. Section 6.4, Section 6.5, Section 6.6, Section 6.7 and Section 6.8 are deleted in their entirety and following substituted in their stead:

“Intentionally Deleted.”

5. The following new sections shall be added to Article Six:

“6.9 Payments Under Agreement an Operating Expense. Buyer agrees and covenants that all payments owing to Seller under this Master Agreement and the Amended and Restated Confirmation Agreement shall constitute an operating expense of the Fund and shall be payable prior to payments on the Bonds, notes or other indebtedness secured by a pledge or assignment of the Trust Estate or payments to the general fund.

6.10 Transfers of Revenues. Buyer shall cause the resolution and indentures providing for the issuance of the Bonds, notes or evidence of indebtedness secured by a pledge of the Trust Estate to provide expressly that payments on the Bonds, notes or other indebtedness will be made by transfers of revenues to a fund established thereunder for such purpose and that any such transfers of revenues will be made only after payment of all amounts due and payable from the Trust Estate as operating expenses, including payments under this Master Agreement and the Amended and Restated Confirmation Agreement.

6.11 Records Retention and Audit. (a) Buyer and Seller, or any third party representative thereof, shall keep complete and accurate records, and shall maintain such records and other data as may be necessary for the purpose of ascertaining the accuracy of all relevant bills, data, estimates, or statements of charges submitted hereunder. Such records shall be maintained for a period of three (3) years after final payment under this Master Agreement and the Amended and Restated Confirmation Agreement. Within three (3) years from final payment under this Agreement and the Amended and Restated Confirmation Agreement, any Party to any transaction may request in writing copies of the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement or charge. The Party from which documents or data has been requested shall cooperate in providing the documents and data within a reasonable time period.

(b) Each of the parties and their designated representatives shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Master Agreement and the Amended and Restated Confirmation Agreement. Each of the parties agrees to maintain such records for

possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Each of the parties agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records.”

#### **Article Seven: Limitations**

Section 7.1 is amended (a) to delete the words “Except as set forth herein” from the first sentence; (b) to add at the beginning of the second sentence the phrase “Except for claims of anticipatory repudiation and the equitable remedies available thereunder,”; and (c) to delete the words “Unless expressly herein provided” from the fifth sentence and substituting in its stead “Notwithstanding anything to the contrary”.

#### **Article Eight: Credit and Collateral Requirements**

1. Section 8.1 and all subsections thereunder are deleted in their entirety and the following substituted in its stead:

“Intentionally Deleted.”

2. Section 8.2(d) is deleted in its entirety and the following substituted in its stead:

“Credit Assurances; Downgrade Event.

(i) In addition to other termination rights set forth in this Master Agreement and the Amended and Restated Confirmation Agreement, Seller shall have the right, but not the obligation, to terminate this Master Agreement and the Amended and Restated Confirmation Agreement without recourse against Buyer for any Termination Payment and without any further obligation or liability of either Seller or Buyer hereunder and thereunder (except for obligations and liabilities that have accrued prior to the date of termination), if Buyer fails to maintain a rating on the Bonds of either Baa3 or better by Moody’s or BBB- by S&P at any time during the Term and such failure continues thereafter for thirty (30) or more consecutive days..

3. Sections 8.2(b), 8.2(c) and 8.2(e) are hereby deleted in their entirety and the following substituted in their stead:

“Intentionally Deleted.”

#### **Article Ten: Miscellaneous**

1. Section 10.1 is amended to delete the words “until terminated by either Party upon (thirty) 30 days’ prior written notice” and substituting the following in its stead:

“until terminated in accordance with the terms of the Amended and Restated Confirmation Agreement”.

2. Buyer shall not be deemed to make the representations and warranties set forth in Sections 10.2 (ix) and (xi).

3. Section 10.2(iii) is amended to add the word “existing” before “law”.

4. Section 10.2 is amended to add the following”

“(xii) Each of Buyer, Seller and the Fund are solvent. No action has been instituted by or against any of Buyer, Seller or the Fund of a bankruptcy, reorganization, moratorium, liquidation or similar insolvency proceeding or other relief under any bankruptcy or insolvency law affecting creditor’s rights or petition have been presented or instituted for its winding-up or liquidation.

(xiii) This Agreement is a “Priority Long Term Power Contract” as that term is defined in the Rate Agreement by and between Party A and the CPUC adopted by the CPUC February 21, 2002 in Decision 02-020051.”

5. Section 10.4 is amended to insert the phrase “To the extent permitted by law,” to the beginning of both sentences.

6. Section 10.5 is amended to delete the phrase “either Party may, without consent of the other Party (and without relieving itself from liability hereunder)” and substituting the following in its stead: “Seller (with respect to clauses (i), (ii) and (iii)) and Buyer (with respect to clauses (i) and (iv) only), may without consent of the other Party:”.

Section 10.5 is further amended to add the following clause (iv) at the end of such section:

“(iv) transfer and assign all of its right, title and interest in this Master Agreement, the Amended and Restated Confirmation Agreement, the Fund, the Trust Estate and all Bonds, notes or other indebtedness secured by pledge or assignment of the Trust Estate, to another governmental entity lawfully created and designated by law to carry out, succeed to and assume all rights, powers, duties, waivers, covenants and obligations of Buyer thereunder, including, without limitation, covenants and obligations with respect to credit; provided that such governmental entity has substantially the same authority as Buyer to establish and to collect its revenue requirements; provided, further, however, that in the event this Master Agreement is pledged or assigned to a bond trustee pursuant to clause (i) as collateral for any Bonds, notes or other indebtedness

issued by Buyer, such bond trustee shall not be required to agree in writing to be bound by the terms and conditions hereof.”

7. Section 10.6 shall be amended to delete “New York” and substitute “California” in its stead.
8. Section 10.8 is amended to delete the phrase “Except to the extent herein provided for,” from the fourth sentence and to add the end of such sentence the following: “ and this Master Agreement and the Amended and Restated Confirmation Agreement may not be orally amended or modified.”
9. The following new sections shall be added to Article Ten:

“10.12 Fixed Rate Contract. The Parties hereby stipulate and agree that, under the facts and circumstances known to them at this time, this Agreement was entered into as a result of arms'-length negotiations between the Parties. Further, the Parties believe that the rates, terms and conditions of this Agreement are just and reasonable within the meaning of Sections 205 and 206 of the Federal Power Act, 16 U.S.C. Sections 824d and 824e, and that the rates, terms and conditions of this Agreement will remain so over the life of the Agreement. The Parties waive all rights to challenge the validity of this Agreement or whether it is just and reasonable for and with respect to the entire term thereof, including any rights under Sections 205 and 206 of the Federal Power Act to request the FERC to revise the terms and conditions and the rates or services specified in this Agreement, and hereby agree to make no filings at the FERC or with any other state or federal agency, board, court or tribunal challenging the rates, terms and conditions of this Agreement as to whether they are just and reasonable or in the public interest under the Federal Power Act. The Parties hereby further stipulate and agree that neither Party may bring any action, proceeding or complaint under Section 205 or 206 of the Federal Power Act, 16 U.S.C. 824d or 824e, seeking to modify, cancel, suspend, or abrogate the rates, terms and conditions of this Agreement or any Transaction hereunder, or to prevent this Agreement or any Transaction hereunder from taking effect. It is further agreed that, in the event any of the Parties challenges this Agreement for any other reason, they will not dispute the applicability of the public interest standard as that term has been defined and interpreted under the Federal Power Act and the cases of *United Gas Pipe Line Co. v. Mobile Gas Corp.*, 350 U.S. 332 (1956), and *FPC v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956), and subsequent cases.

**10.13 SUBMISSION TO JURISDICTION; SERVICE OF PROCESS. THE PARTIES AGREE TO SUBMIT TO THE JURISDICTION OF THE STATE COURTS OF THE STATE OF CALIFORNIA. EACH PARTY AGREES TO APPOINT AN AGENT FOR SERVICE OF PROCESS IN THE STATE OF CALIFORNIA.**

10.14 WAIVER OF JURY TRIAL. EACH PARTY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY SUIT, ACTION, CLAIM OR PROCEEDING RELATING TO THIS MASTER AGREEMENT AND/OR THE AMENDED AND RESTATED CONFIRMATION AGREEMENT.

10.15 Rate Covenant; No Impairment. In accordance with Section 80134 of the California Water Code, Buyer covenants that it will, at least annually, and more frequently as required, establish and revise revenue requirements sufficient, together with any moneys on deposit in the Fund, to provide for the timely payment of all obligations which it has incurred, including any payments required to be made by Buyer pursuant to this Master Agreement and the Amended and Restated Confirmation Agreement. As provided in Section 80200 of the California Water Code, while any obligations of Buyer pursuant to this Master Agreement and the Amended and Restated Confirmation Agreement remain outstanding and not fully performed or discharged, the rights, powers, duties and existence of Buyer and the California Public Utilities Commission shall not be diminished or impaired in any manner that will affect adversely the interests and rights of Seller under this Master Agreement or the Amended and Restated Confirmation Agreement.

10.16 No More Favorable Terms. Buyer shall not provide in any power purchase agreement payable from the Trust Estate for (i) collateral or other security or credit support with respect thereto, (ii) a pledge or assignment of the Trust Estate for the payment thereof, or (iii) payment priority with respect thereto superior to that of Seller.

10.17 No More Favorable Immunity or Jurisdiction Provision. Buyer shall not offer to any party or provide in any power purchase agreement an immunity provision or a jurisdiction provision more favorable than the immunity provision set forth in Section 3.5 and the jurisdiction provision set forth in Section 10.13, without in each case offering such arrangements to Seller.

10.18 No Retail Services; No Agency. (a) Nothing contained in this Agreement shall grant any rights to or obligate Seller to provide any services hereunder directly to or for retail customers of any Person.

(b) In performing their respective obligations hereunder, neither Party is acting, or is authorized to act, as agent of the other Party.

10.19 Novation. Notwithstanding the limitations on assignment set forth in Section 10.5 above, at any time after January 1, 2003, the Seller shall, upon the written request of Buyer, enter into one or more Replacement Agreements as may be agreed to by one or more Qualified Electric Corporations. This Agreement shall terminate upon effective date of a Replacement Agreement. The

effectiveness of the Replacement Agreement shall constitute a novation that shall relieve Department of any liability or obligation arising after the date of termination of the Agreement. Such Replacement Agreement shall state that it is a Replacement Agreement within the meaning of the Agreement and that it constitutes a novation for which there is adequate consideration. The effectiveness of such Replacement Agreement shall be subject to the condition precedent that the California Public Utilities Commission shall have conducted a just and reasonable review under Section 451 of the Public Utilities Code with respect to such Replacement Agreement and shall have issued an order determining that the charges under such Replacement Agreement are just and reasonable. If the Qualified Electric Corporation is an affiliate of Seller, Seller's obligation to enter into a Replacement Agreement shall be subject to the condition precedent that, in connection with the just and reasonable review under Section 451 of the Public Utilities Code to be conducted by the CPUC as set forth above, the CPUC will not find Seller, with respect to the Replacement Agreement, to be in violation of CPUC rules, regulations and orders governing affiliate transactions. If the Qualified Electric Corporation is an affiliate of Seller, Seller's obligation to enter into a Replacement Agreement shall be subject to the condition precedent that the Federal Energy Regulatory Commission shall have determined that the affiliate transaction is just and reasonable under Section 205 of the Federal Power Act.

10.20 Amendments and Modifications. This Master Agreement may not be modified or amended except by an instrument or instruments in writing signed by the Party against whom enforcement of any such modification or amendment is sought. Any Party may, only by an instrument in writing, waive compliance by the other Party with any term or provision of this Master Agreement on the part of such other Party to be performed or complied with. The waiver by a Party of a breach of any term or provision of this Master Agreement shall not be construed as a waiver of any subsequent breach.

10.21 Entire Agreement. This Master Agreement and the Amended and Restated Confirmation Agreement, when executed, constitute the entire agreement by and between the parties and supersedes any prior understandings, agreements or representation by or between the parties, written or oral, to the extent they have related in any way to the subject matter hereof and thereof (including, without limitation, the Master Power Purchase and Sale Agreement, dated as of June 25, 2001, by and between Party A and Party B), except as otherwise explicitly noted herein and in the Amended and Restated Confirmation Agreement. In the event of any conflict between this Master Agreement and the Amended and Restated Confirmation Agreement, the terms of the Amended and Restated Confirmation Agreement shall control.

10.22 Severability. In the event that any of the terms, covenants or conditions of this Master Agreement, or the application of any such term, covenant or condition, shall be held invalid as to any Person or circumstance by any court, regulatory agency, or other regulatory body having jurisdiction, all other terms,

covenants or conditions of this Master Agreement and their application shall not be affected thereby, but shall remain in force and effect unless a court, regulatory agency, or other regulatory body holds that the provisions are not separable from all other provisions of this Master Agreement.

10.23 Counterparts. This Master Agreement may be executed in any number of counterparts, and upon execution by the parties, each executed counterpart shall have the same force and effect as an original instrument and as if the parties had signed the same instrument.”

## **Schedule M**

Schedule M shall be amended as follows:

1. The definition of “Act” shall be as follows:

“Act” means Sections 80000, 80002, 80002.5, 80003, 80004, 80010, 80012, 80014, 80016, 80100, 80102, 80104, 80106, 80108, 80110, 80112, 80116, 80120, 80122, 80130, 80132, 80134, 80200, 80250, 80260 and 80270 of the California Water Code, as amended.

2. The definition of “Governmental Entity or Public Power System” shall be deleted in its entirety and the following substituted in its stead:

“Governmental Entity or Public Power System” means the State of California Department of Water Resources separate and apart from its powers and responsibilities with respect to the State Water Resources Development System”; and all references to (A) "Governmental Entity or Public Power System" (and cognates) and (B) "Public Power System" (and cognates) in Schedule M shall be replaced with the new defined term "Governmental Entity" (using the applicable cognate).

3. The definition of “Special Fund” shall be deleted in its entirety and the following substituted in its stead:

“Special Fund” means the Fund.

4. Section D is amended to delete Section 3.5 in its entirety and the following substituted in its stead:

“Section 3.5 No Immunity Claim. California law authorizes suits based on contract against the State of California or its agencies, and Buyer agrees that it will not assert any immunity it may have as a state agency against such lawsuits filed in state court.”

5. Section G is amended to specify California law.

6. The following shall be added as new Section H:

“Application of Government Code and the Public Contracts Code. Seller has stated that, because of the administrative burden and delays associated with such requirements, it would not enter into this Master Agreement if the provisions of the California Government Code and the Public Contracts Code applicable to state contracts, including, but not limited to, advertising and competitive bidding requirements and prompt payment requirements would apply to or be required to be incorporated in this Agreement. Accordingly, pursuant to Section 80014(b) of the California Water Code, Buyer has determined that it would be detrimental to accomplishing the purposes of Division 27 (commencing with Section 80000) of the California Water Code to make such provisions applicable to this Master Agreement and that such provisions and requirements are therefore not applicable to or incorporated in this Master Agreement.”

7. Section D shall be amended to add the following language:

"Section 3.7. Sources of Payment; No Debt of State. Seller's obligation to make payments hereunder shall be limited solely to the Fund. Any liability of Buyer arising in connection with this Master Agreement or any claim based thereon or with respect thereto, including, but not limited to, any Termination Payment arising as the result of any breach or Potential Event of Default or Event of Default under this Master Agreement, and any other payment obligation or liability of or judgment against Buyer hereunder, shall be satisfied solely from the Fund. NEITHER THE FULL FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE OF CALIFORNIA ARE OR MAY BE PLEDGED FOR ANY PAYMENT UNDER THIS AGREEMENT. Revenues and assets of the State Water Resources Development System shall not be liable for or available to make any payments or satisfy any obligation arising under this Agreement.”

IN WITNESS WHEREOF, the Parties have caused this Master Agreement to be duly executed as of the Effective Date and Time.

**CALIFORNIA DEPARTMENT  
OF WATER RESOURCES**

**SUNRISE POWER COMPANY, LLC**

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name: Kelly S. Lucas  
Title: Executive Director

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